

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--------------------------------|---|---------------|
| AN INVESTIGATION OF TOLL AND |) | |
| ACCESS CHARGE PRICING AND TOLL |) | |
| SETTLEMENT AGREEMENTS FOR |) | CASE NO. 8838 |
| TELEPHONE UTILITIES PURSUANT |) | PHASE I |
| TO CHANGES TO BE EFFECTIVE |) | |
| JANUARY 1, 1984 |) | |

AND

| | | |
|-------------------------|---|----------------|
| DETARIFFING BILLING AND |) | ADMINISTRATIVE |
| COLLECTION SERVICES |) | CASE NO. 306 |

O R D E R

PROCEDURAL BACKGROUND

On April 30, 1990, the Commission issued its Order addressing rehearing in the above-styled cases. On May 21, 1990, Integretel, Inc. ("Integretel") filed a petition for intervention and an application for rehearing. Integretel's petition for intervention has been granted.

On May 21, 1990, Intellicall, Inc. ("Intellicall") filed a motion for further rehearing, and on May 22, 1990, Intellicall filed a petition for intervention. Intellicall's petition for intervention has been granted. Further, on May 29, 1990 and May 30, 1990, Intellicall filed a motion for an informal conference with the parties in these cases and a motion for stay of the Commission's April 30, 1990 Order, respectively. The Commission received no responses to the petitions for rehearing.

This Order addresses the petitions for rehearing of the April 30, 1990 Order and Intellicall's motions for an informal conference and stay of the April 30, 1990 Order. There are two issues on which rehearing is sought.

Underlying Carrier Identification

Integretel requested the Commission to reconsider its decision to require the local exchange carriers ("LECs") to reflect the name of the underlying carrier on customer bills. Integretel states that the record does not reflect whether Kentucky LECs have the capability to perform the billing requirement to recognize multiple Carrier Identification Codes ("CICs"). Thus, using existing billing programs, the LECs may not be able to identify the separate CICs of the intermediary and underlying carrier in order to identify the underlying carrier's name on customer bills. Integretel further states that modifications to existing billing programs would be costly and economies from using a billing intermediary would be reduced and/or lost which could, in turn, limit the number of Interexchange Carriers ("IXCs") thereby reducing customers' available choices.

The Commission is not persuaded to change its position on this issue. In its decision to require LECs to identify the name of the underlying carrier on customer bills, the Commission was aware that this requirement could entail additional costs. However, the Commission was and is still of the opinion that a customer's need to know the identity of and be billed by the underlying telecommunications carrier for services rendered is

basic, and the social benefits clearly outweigh any attendant costs. Accordingly, the Commission finds that it is unreasonable to allow LECs to bill for an underlying telecommunications carrier without disclosing on the bill the identity of that carrier.

Smart Customer Premises Equipment Providers

Intellicall and Integretel petitioned for rehearing on the Commission's decision to prohibit LECs to bill and collect either directly or through intermediaries for "smart customer premises equipment providers."¹ Although the request for rehearing and the Commission's April 30, 1990 decision was for various smart customer premises equipment providers, Intellicall and Integretel both give special emphasis to "smart" Customer-Owned Coin Operated Telephones ("COCOTS") which employ new technological features that permit the phone itself to perform certain automated services. Integretel and Intellicall state that it is not economically feasible for smart customer premises equipment providers to bill and collect for these services directly since the costs of separate billing for casual calls to consumers, with the risks of uncollectibles, are simply too large to economically justify direct billing and collection. Intellicall states specifically that the smart customer premises equipment providers have identical needs to Alternative Operator Service ("AOS") providers and that the Commission's Order permitted LEC billing and collection for AOS companies and other IXCs' charges but prohibited similar treatment for the smart customer premises

¹ Intellicall, Petition for Rehearing, filed May 22, 1990, p. 3.

equipment providers. Intellicall further states that to prohibit LEC billing and collection to these smart customer premises equipment providers is arbitrary and discriminatory.

The Commission's Order is neither arbitrary nor discriminatory. For LEC billing and collection services provided for Kentucky intrastate messages, the Commission's April 30, 1990 Order at page 14 states that these services "shall be provided only to utilities having tariffs on file with the Kentucky Public Service Commission and only for the tariffed services." The Commission believes that it is reasonable to allow the billing and collections for intrastate messages that are tariffed services and fall into the state law definition of the utility services regulated by the Public Service Commission. It is not reasonable to allow the state regulated utility to place any and all charges whether utility related or not on telephone bills for collection. The most reasonable distinction as to what a utility may or may not include on its bill to its customer is the one made by the Commission's Order in this matter. The Commission has a duty to determine the range of the billing and collection services performed by utilities under its jurisdiction and to protect the utilities' customers from both excessive billing and collections and from unreasonable billing and collection. The Commission moreover does not believe that it is appropriate to consider the difficulty that a nonutility service provider may have with direct billing in making its determination of reasonable utility billing and collection practices.

The petitioners try to align themselves with intrastate cellular services and argue that the Commission is being arbitrary by allowing the billing and collections for intrastate cellular, but not for smart customer premises equipment providers. However, intrastate cellular services are tariffed services. In Administrative Case No. 293,² the Commission determined that COCOTS and other shared tenant services were not utilities. Smart customer premises equipment providers are employing automated equipment of the type described by Intellicall which was not contemplated in Administrative Case No. 293. Nonetheless, to date, smart customer premises equipment providers are not regulated and do not have tariffs for their services on file at the Commission. Therefore, the Commission finds it unreasonable to allow the LECs to bill and collect for their intrastate services.

The Commission's April 30, 1990 Order, at page 8, states that the Commission will "permit LECs to bill and collect for interstate telecommunication services for IXC's whether tariffed at the FCC or not." The petitions for rehearing necessitate clarification of this part of the Commission's Order. The Commission will permit the LECs to bill and collect for interstate telecommunication services for IXC's when that service, absent its interstate nature, would be allowed by Kentucky state law to be a tariffed utility service. This clarification again evidences that the Commission's Order is neither arbitrary nor discriminatory.

² Administrative Case No. 293, Inquiry Into Local Resale of Exchange Services by STS Providers and COCOT Providers.

The Commission is simply determining what type of services the LECs should be permitted to bill and collect from Kentucky end-users. For the reasons stated above, the Commission finds that it is best to allow the LECs to bill and collect only for interstate IXC telecommunication services that the state law defines as regulated services.

Intellicall further argued that an additional reason that the Commission must not distinguish between smart customer premises equipment providers in the provision of billing and collection services is that such a distinction would conflict with the AT&T Consent Decree (Modified Final Judgment). That section states:

The BOC may not discontinue local exchange service to any customer because of nonpayment of interexchange charges unless it offers to provide billing services to all interexchange carriers. United States v. American Telephone & Telegraph Company, 552 F. Supp. 131, 234 (D.D.C. 1982).

The Modified Final Judgment defines a carrier as:

. . . any person deemed a carrier under the Communications Act of 1934 or amendments thereto, or, with respect to intrastate telecommunications, under the laws of any State. 552 F. Supp. at 228.

KRS Chapter 278 and the Commission's regulations do not define "carrier;" however, it is the Commission's opinion that the term "carrier" is a "utility" as defined under Kentucky law. As stated previously, smart customer premises equipment providers are not utilities; thus, the Commission's decision is not unlawful.

Integretel, to support its request that the Commission should permit LECs to bill and collect for smart customer premises equipment providers, stated that some LECs in Kentucky already provide billing for nonutility services and cited specifically 976

services. The April 30, 1990 Order prohibited LECs from providing intrastate billing and collection services for nontariffed services and products of regulated jurisdictional IXC's except as stated on page 8, ". . . unless permitted by application in a special case." The Order, at page 8, further stated that the Commission had previously permitted LECs to bill and collect, but not disconnect, for inside wire and certain customer premises equipment. Thus, the Commission's April 30, 1990 Order does not permit LECs to bill and collect for 976 vendor services or any other nontariffed services of jurisdictional IXC's.

Accordingly, Intellicall's and Integretel's petitions for rehearing, and Intellicall's motion to stay the April 30, 1990 Order with respect to decisions related to smart customer premises equipment providers are denied.

Intellicall has also requested an informal conference made necessary, it argues, because of the development of the advanced telephone technology. However, the Commission believes that the record is sufficiently adequate to accommodate those determinations it has reached.

Orders

The Commission, being sufficiently advised, hereby ORDERS that:

1. Intellicall's petition for rehearing be and it hereby is denied.
2. Integretel's petition for rehearing be and it hereby is denied.

3. Intellicall's motion for a stay of the Commission's April 30, 1990 Order in these proceedings be and it hereby is denied.

4. Intellicall's motion for an informal conference with the parties in these proceedings be and it hereby is denied.

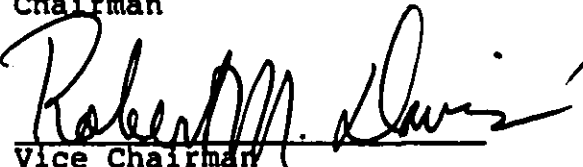
5. The April 30, 1990 Order in these proceedings is hereby modified for the purpose of clarification as follows: LECs are allowed to bill and collect for interstate IXC telecommunications services only when that service, absent its interstate nature, is of the type of utility service allowed by Kentucky state law to be a tariffed utility service.

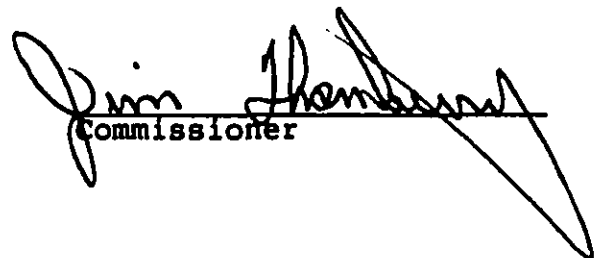
6. Any LEC's billing and collection tariffs requiring modification to comply with the Commission's decisions herein or in its April 30, 1990 Order should be filed within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 11th day of June, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director